

NEWSLETTER

Manuela António - 安文娜 大律師及公證員 | *Lawyers and Notaries*

28 OCTOBER 2019

INTERNATIONAL TRADE

The Kimberley Process Rules for Diamond Trade in Macau

The Legislative Assembly of the Macau S.A.R. recently passed two legal diplomas which will enable Macau to implement the Kimberley Process Certification Scheme (KPCS): Law no. 15/2019, and Administrative Regulation no. 29/2019 – complementing the former. This will allow the Region to formally engage in the international trade in rough diamonds, in line with the currently established international standards.

The above legislation came into force on the first day of October and aims to help Macau develop its already significant diamond and jewellery trade sector.

I. Requirements and liabilities

In accordance with the new laws, an individual or entity that intends to import, export, transit, purchase, sale or transport rough diamonds in Macau will be required to obtain an operator License (the “License”). The License will be valid for two years and is renewable for equal periods, provided that the applicant submits the request for renewal and the necessary information at least 10 working days before its expiry date. It should also be pointed out that this request must be submitted with the Macau Economic Services Bureau (the “DSE”).

The issue or renewal of the License is subject to the cumulative fulfilment of the following requirements:

- having not the commencement of activity at the Macau Tax Bureau (the “MTB”);
- to not have been declared bankrupt or insolvent unless they have been rehabilitated according to the law;
- to have a permanent registered office in order to pursue their activity in Macau;
- having no tax debts towards the Macau S.A.R.; and
- to be considered suitable for the exercise of the activity.

It should be noted that the operator or its directors may be considered unsuitable for the exercise of their activity if they have practised in the Macau S.A.R. or abroad certain acts that may be deemed as adverse to the transaction of rough diamonds. Nevertheless, it should be noted that such acts will not be considered for the issuance of the License if the individual or entity was rehabilitated under the law.

“In accordance with the new laws, an individual or entity that intends to import, export, transit, purchase, sale or transport rough diamonds in Macau will be required to obtain an operator License (...) The License will be valid for two years and is renewable for equal periods, provided that the applicant submits the request for renewal and the necessary information at least 10 working days before its expiry date.”

In terms of the actual application, the DSE is the responsible entity for the handling of the procedures, and the applications should be accompanied by the following documents (notwithstanding certain exceptions provided for in the law):

- the address of the registered office where the applicant is operating in Macau and the identification details of his/her name or business name and, in the case of a legal person, the identification details of its directors;
- a certificate of the applicant's criminal record or equivalent document and, in the case of a legal person, that of its directors;
- a certificate of the Commercial Registry or a photocopy of the document proving the declaration of commencement of the activity for taxation purposes and, in the case of a legal person, a certificate of Commercial Registry, including copies of the articles of association duly updated;
- a declaration issued by the applicant stating that he/she has not been declared bankrupt or insolvent, in accordance with the applicable legal provisions, in the case of a legal person, as well as a statement issued by the applicant stating that the members of the governing bodies have not been declared bankrupt or insolvent; and
- a document which proves that the applicant does not owe any taxes in the Macau S.A.R.

The presentation of the necessary documents for the request of the certificate, import license, export license or transit license is made by electronic data transmission, and the electronic processing provisions set forth by Law 5/2005 (documents and electronic signatures) are applicable.

After due submission, the head of the DSE shall then decide to grant or reject the application within 10 working days from the date of receipt of all documents pertaining to the application.

As referred, upon being granted, the License will be valid for a period of 2 years, renewable for equal periods. It should also be noted that the License can be cancelled by DSE (please see below paragraph III)

In addition to the License, the economic operator will also require to request a license for importation, exportation and transit as well as certificates, whenever it desires to carry out an importation, exportation or transit operation. These requests need also to be submitted with DSE.

The period of validity of these certificates cannot exceed 60 days and the export, import and transit licenses shall be valid for 30 days.

In terms of the overall reach, importation and exportation of rough diamonds from non-participating countries of the KPCS or regions are strictly prohibited.

II. Obligations of the operator

Any individual or entity engaged in the importation, exportation, transit, purchase, sale or transport of rough diamonds is required to:

- keep up to date records concerning the activities of rough diamond trading for a period of five years, through a digital database

“The presentation of the necessary documents for the request of the certificate, import license, export license or transit license is made by electronic data transmission, and the electronic processing provisions set forth by Law 5/2005 (documents and electronic signatures) are applicable.

After due submission, the head of the DSE shall then decide to grant or reject the application within 10 working days from the date of receipt of all documents pertaining to the application.”

- including import, export, purchase or sale, namely the names of the customers and suppliers, license and certificate numbers and the quantity and value of rough diamonds sold, exported or purchased);

- to submit to the DSE whenever required the complete records regarding the activities of importation, exportation and purchase and sale of rough diamonds; and
- to pay all the expenses arising from inspection reports carried out abroad regarding rough diamonds.

III. License Cancellation and consequences

The License is cancelled in any of the following situations:

- if the licensee requests it;
- if the licensee no longer meets any of the requirements for the exercise of the activity and this situation has not been remedied within the legally determined timeframe;
- if the holder of the License does not fulfil any of the requirements for the exercise of the activity at the time of the License application, within the validity period of the License (with certain exceptions);
- the licensee assigns his License.
- the License holder dies (in case of an individual), or there is a termination of his activity (in case of a legal entity);
- expiry of the License, without being renewed;
- the License has been obtained through false declarations, misrepresentation or other unlawful means;
- the licensee does not voluntarily pay the fine imposed under the law no. 15/2019; and
- if the licensee is prohibited, by a Court decision, from exercising the activities regulated by the law no. 15/2019 for a period that exceeds the remaining period of validity of the License.

Should the License be cancelled, the holder is required to immediately cease the pursuit of rough diamond trading activities, without prejudice of obtaining a new License, if the necessary legal requirements are met.

IV. Compliance and Sanctions

Apart from licensing procedures, the DSE is in charge of undertaking inspections and surveys as it deems necessary to ensure the application and enforcement of the new law, notably by overseeing the activities and the facilities of the relevant entities – who are legally compelled to cooperate with the DSE. Also, the DSE acts as an assistant to the Macau Customs Services (the “MCS”), which is the general supervisory body for the purposes of Law no. 15/2019 and Administrative Regulation no. 29/2019.

The MCS is responsible for verifying the conformity between certificates, licenses and documents submitted by the operator carrying out import or export activities of rough diamonds – without prejudice to the supervisory powers conferred on the DSE.

“Apart from licensing procedures, the DSE is in charge of undertaking inspections and surveys as it deems necessary to ensure the application and enforcement of the new law, notably by overseeing the activities and the facilities of the relevant entities – who are legally compelled to cooperate with the DSE. Also, the DSE acts as an assistant to the Macau Customs Services (the “MCS”), which is the general supervisory body for the purposes of Law no. 15/2019 and Administrative Regulation no. 29/2019.”

In that regard, the DSE alongside the MCS hold the authority to undertake, within their discretion, the precautionary seizure of rough diamonds which are in breach of the provisions of the law. Upon such seizure, the MCS or the DSE will notify the holder of the diamonds or the offender, in order to remedy the situation within 30 days. Should the situation remain unsolved within the period provided for in the preceding paragraph, the DSE or the MCS will then determine the definitive seizure of the respective rough diamonds.

Lastly, it should be noted that Law no. 15/2019 contemplates a section for criminal responsibility and administrative sanctions. In this context, the crime of disobedience is the only criminal sanction which the law prescribes, as a result of the failure to comply with the duty to cooperate with the DSE – in regard of the abovementioned inspections and surveys.

As far as administrative sanctions are considered, the fines may range between the amounts of MOP10,000 and MOP5,000,000 for violation of certain legal provisions. Here are the relevant administrative offences:

- the lack of certificates for diamond import and export issued by the competent authority is sanctioned with a fine of MOP500,000 to MOP5,000,000;
- the continuation of exercise of the diamond trading activities upon cancellation, suspension and declaration of nullity of the License to trade diamonds is sanctioned with a fine of MOP200,000 to MOP2,000,000;
- participating in trade or exporting rough diamonds to KPCS non-participating countries or regions is sanctioned with a fine of MOP200,000 to MOP2,000,000;
- the violation of the obligation to keep continuously updated all records concerning the activities of diamonds for a period of five years, via a computer database, is sanctioned with a fine of MOP10,000 to MOP50,000; and
- the non-return of a License upon its expiration date or the declaration of its nullity is sanctioned with a fine of MOP10,000 to MOP50,000.

Also, there are also a few accessory sanctions which may additionally be carried out, either cumulatively or on their own. Specifically:

- loss of rough diamonds in favour of the Macau S.A.R. government – which are then destroyed;
- prohibition of issuance of certificates to the offender for a period not exceeding two years; and
- cancellation of valid certificates issued to the offender.

“In this context, the crime of disobedience is the only criminal sanction which the law prescribes, as a result of the failure to comply with the duty to cooperate with the DSE – in regard of the abovementioned inspections and surveys. As far as administrative sanctions are considered, the fines may range between the amounts of MOP10,000 and MOP5,000,000 for violation of certain legal provisions.”

NEWSLETTER

Manuela António - 安文娜 大律師及公證員 | *Lawyers and Notaries*

The distribution of this communication is limited and the information herein expressed is for general purposes only, not substituting legal advice on specific issues.

Contacts

Dr. Carlos D'Assumpção, n.ºs 411-417, Edifício Dynasty Plaza, 15.º andar D-H, Macau, China

T.: +853 28 591 592 / 128
F.: +853 28 345 678
info@mantonio.net
www.mantonio.net